



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

DEC 22 2004

**VIA FIRST CLASS MAIL**

Norman Fornella  
40 Waterfront Circle  
Buffalo, NY 14202

RE: MUR 5628

Dear Mr. Fornella:

On December 15, 2004, the Federal Election Commission found that there is reason to believe you knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based upon information ascertained in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

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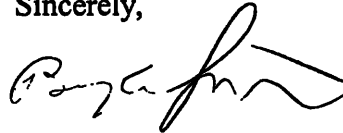
demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Mark Goodin, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Factual and Legal Analysis  
Procedures  
Designation of Counsel Form  
Conciliation Agreement

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 MUR: 5628

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6 RESPONDENT: Norman Fornella

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9 **I. INTRODUCTION**

10 Through its counsel, AMEC Construction Management, Inc. ("AMEC") and AMEC plc  
11 (AMEC's ultimate corporate parent) made a voluntary submission notifying the Commission that  
12 AMEC appeared to have violated the Federal Election Campaign Act of 1971, as amended (the  
13 "Act")<sup>1</sup> by reimbursing approximately \$17,000 of its employees' contributions to federal election  
14 campaigns from at least 1998 to 2000. The submission detailed contributions to federal  
15 candidates since October 1998, made by executives and reimbursed by AMEC using general  
16 treasury funds.

17 AMEC, formerly known as Morse Diesel International, Inc. ("Morse Diesel"), provides  
18 construction management services for large construction projects within the United States.  
19 AMEC's ultimate parent company (AMEC plc) initially acquired an interest in Morse Diesel in  
20 1990. AMEC plc acquired the remaining interest in Morse Diesel in 1995, and operated the  
21 company under that name until it changed it to AMEC in 2001.

22 In October 2003, AMEC and AMEC's ultimate parent company (AMEC plc) revealed to  
23 the Commission the existence of a program by which AMEC reimbursed certain employees for

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<sup>1</sup> All of the facts relevant to this matter occurred prior to November 6, 2002, the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Therefore, unless specifically noted to the contrary, all references to statutes and regulations in this report pertain to those that were in effect prior to the implementation of BCRA.

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1 making contributions to federal election campaigns. Beginning as early as the late 1980's, the  
2 company allegedly made such reimbursements through its expense account system. Later,  
3 assertedly after receiving advice from a tax advisor at the firm KPMG, AMEC made these  
4 reimbursements by paying special bonuses through its payroll system. According to AMEC, its  
5 then-CFO (Norman Fornella) or another officer determined which contributions to make and  
6 which employees would make them. Mr. Fornella then allegedly instructed the selected  
7 employee to make a particular political contribution and instructed an accounting department  
8 supervisor to pay a "grossed up" bonus to that employee. As a result, the employee's net bonus,  
9 after taxes, equaled the amount of the contribution at issue.

## 10 II. ANALYSIS

11 The Act prohibits any officer or director of any corporation from consenting to any  
12 contribution or expenditure by that corporation. 2 U.S.C. § 441b(a). In addition, the Act  
13 provides that "[n]o person shall make a contribution in the name of another person or knowingly  
14 permit his name to be used to effect such a contribution...." 2 U.S.C. § 441f. Commission  
15 regulations also prohibit persons from knowingly assisting in making contributions in the name  
16 of another. 11 C.F.R. § 110.4(b)(1)(iii).

17 Based on AMEC's internal investigation, it appears that Norman Fornella (who was a  
18 CFO of AMEC) or another officer allegedly determined which contributions to make, which  
19 employees would make (and be reimbursed) for them, and admitted to receiving at least one  
20 reimbursement from AMEC for contributions to federal campaigns. Mr. Fornella thus  
21 knowingly assisted in making contributions in the name of another and permitted his name to be

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1 used to effect a contribution in the name of another. Moreover, Norman Fornella apparently  
2 consented to AMEC's corporate contributions.

3 Mr. Fornella accepted \$6,000 in reimbursements from AMEC for political contributions  
4 during the period from October 15, 1998 to December 1999. Furthermore, for the period from  
5 January 1995 to October 15, 1998, Mr. Fornella made \$3,000 in political contributions, some of  
6 which were reimbursed from AMEC.

7 The actions of Norman Fornella, who directed or actively participated in AMEC's  
8 disguised corporate reimbursement scheme, appear to constitute knowing and willful conduct  
9 under the Act. *See* 2 U.S.C. § 437g(a)(5)(B); *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup>  
10 Cir. 1990) (under 18 U.S.C. § 1001, "knowing and willful" false representation proven where  
11 defendant acted "deliberately and with knowledge that the representation was false"); *United*  
12 *States v. Whab*, 355 F.3d 155, 162 (2d Cir. 2004) (no "plain error" in district court's jury  
13 instruction that the term "willfully" requires only a criminal defendant's "aware[ness] of the  
14 generally unlawful nature of his conduct").<sup>2</sup> One may draw an inference of a knowing and  
15 willful act "from the defendants' elaborate scheme for disguising" their actions. *Hopkins*, 916  
16 F.2d at 214-15. The *Hopkins* case involved a program of corporate reimbursements for  
17 employees' political contributions. The defendants (who were officers or directors of savings  
18 and loan institutions) "signed forms which indicated that employees were receiving pay raises

<sup>2</sup> By comparison, the District of Columbia Circuit has interpreted the "knowing and willful" standard to require a finding of "defiance or knowing, conscious, and deliberate flaunting [sic] of the Act." *National Right to Work Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983) (internal citation omitted) (no "defiance" or "knowing, conscious, and deliberate flaunting" of the Act that would support "knowing and willful" violation of contribution solicitation requirements in light of "ambiguities" of statute and lack of Commission guidance).

1 because their status had changed when in fact the employees received pay raises only so that they  
2 could contribute” to a political committee. *Id.* at 213.

3 In the present matter, AMEC admits that it does not have any written records of its  
4 special bonuses to reimburse employees’ political contributions (except for computerized payroll  
5 records that simply reflected that a bonus was paid). Moreover, AMEC has not revealed  
6 whether, during the operation of its expense-based reimbursement scheme, its employees openly  
7 claimed that the purposes of their expense submissions were for political contributions. AMEC’s  
8 decision to move the reimbursement scheme from its expense account system to its payroll  
9 system makes these reimbursements more difficult to track. The absence of written records  
10 concerning its corporate reimbursements suggests not only that AMEC was aware of the  
11 “generally unlawful nature” of its conduct, but that it created an “elaborate scheme for  
12 disguising” its corporate political contributions. *Whab*, 355 F.3d at 162; *Hopkins*, 916 F.2d at  
13 214-15. AMEC has not explained why it did not simply make corporate contributions directly to  
14 various political committees, which may suggest its knowledge of the unlawful nature of its  
15 conduct. AMEC’s conclusory assertion that its conduct was not “knowing and willful,” does  
16 nothing to refute the inference of “knowing and willful” activity based on AMEC’s hidden  
17 reimbursement scheme. *See Hopkins*, 916 F.2d at 214-15.

18 In conclusion, based on the information provided by AMEC, and other publicly available  
19 information, the Commission finds reason to believe that Norman Fornella knowingly and  
20 willfully violated 2 U.S.C. §§ 441b(a) and 441f.

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